

**NIH POLICY MANUAL**  
**1170 – Relationships with the Office of the General Counsel**  
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1. **Explanation of Material Transmitted:** This chapter contains current policies and procedures applicable to obtaining formal and informal legal advice and routine clearance services from the Office of the General Counsel (OGC) on NIH matters. The chapter has been reissued at this time to meet the requirement that NIH Manual Chapters be revised or reissued every five years.

**2. Filing Instructions:**

Remove: NIH Manual 1170 dated 12/10/93

Insert: NIH Manual 1170 dated 06/05/03

**PLEASE NOTE:** For information on:

- Contents of this chapter, contact the Office of Management Assessment on 496-2832.
- On-line information, enter this URL:  
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## Relationships with the Office of the General Counsel

**A. Purpose:** This chapter states policies and procedures applicable to obtaining formal and informal legal advice and routine clearance services from the Office of the General Counsel (OGC) on NIH matters.

**B. Background:** An Assistant Secretary for Health's memorandum to PHS Agency Heads, dated January 8, 1982, requests that each agency establish procedures for obtaining advice from its Legal Advisor.

The Department of Health and Human Services (DHHS) policy prohibits its agencies from having their own legal advisors. For purposes of this manual chapter, "legal advisor[s]" is defined as anyone, employee or contractor, who provides legal advice, whether or not he/she is a licensed attorney. Thus, agencies may not spend appropriated or gift funds to obtain legal advice from any source other than the DHHS Office of the General Counsel, absent a specific delegation from DHHS OGC.

The NIH Branch of the Office of the General Counsel, Public Health Division, is located on the NIH campus. The Deputy Associate General Counsel for Public Health, NIH, is the head of this Branch and is known internally at NIH as the NIH Legal Advisor. The NIH Legal Advisor and staff are not NIH employees but they work closely with NIH employees in policy development and routine business requiring legal insight. The NIH Legal Advisor and staff traditionally work closely with NIH officials in formulating policy rather than simply acting as a sign-off point before the policy is implemented.

**C. Definitions:** For the purposes of this chapter, the following terms and definitions are useful in determining the appropriate procedures to be followed.

1. **Referring Official:** Includes the NIH Director, Deputy Directors, Associate Directors, NIH/OD Office and Division Directors, and Institute and Center, (IC) Directors, Deputy Directors, Executive Officers, and delegates of the foregoing.
2. **Formal Legal Advice:** Any written request, signed by a Referring Official and addressed to the OGC, asking for a formal opinion on which the requester intends to base significant official action.
3. **Informal Legal Advice:** Any request to the OGC used in formulating program level policies and procedures but not including matters requiring a formal legal opinion. This includes all oral requests for OGC assistance and

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may include written requests. It also includes discussions with OGC staff in drafting NIH work products.

4. **Routine Clearance Services:** Any routine established request for OGC services (including OGC sign-off for Federal Register notices, delegations of authority, regulations, Legislative Implementation Plans, research contracts).

#### **D. Responsibilities:**

1. The OGC provides both formal and informal legal advice to NIH staff upon request following the procedures specified in this chapter.
2. A Referring Official must sign any request to the OGC for formal legal advice before the request is submitted to the OGC to ensure that the OGC receives only those requests for legal assistance that are in fact required. Before referring a new request to OGC, the Referring Official determines if the request is applicable to: (1) any other NIH program; and/or (2) any other agency program within the Department. If the latter applies, the Referring Official calls the matter to the attention of the NIH Legal Advisor or staff.
3. Any NIH employee requesting written formal legal advice or opinions from the OGC must submit the request, through supervisory channels, to his/her Referring Official.

#### **E. Procedures:**

1. **Formal Legal Advice:** Send each written request for legal advice or services directly to the OGC (Building 31, Room 2B50) after it has been signed by the Referring Official.
2. **Informal Legal Advice:** Contact the OGC directly (496-6043) when such advice is needed. Requests for such advice are confined to official business of the agency. The OGC is not available for counseling on personal employee business, employee grievances, etc. The OGC is available for counseling on legal matters which may be the subject of Congressional testimony, judicial hearings, etc.
3. **Routine Clearance Services:** Contact the OGC directly according to previously established procedures (see C4).

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4. Special Procedures: The OGC will establish procedures for dealing with those offices of NIH that have high volume of transactions or deal with especially sensitive matters.

#### **F. Records Retention and Disposal:**

All records (e-mail and non-e-mail) pertaining to this chapter must be retained and disposed of under the authority of [NIH Manual 1743](#), "Keeping and Destroying Records," Appendix 1, 'NIH Records Control Schedule,' Item 1100-M which covers Administrative Files. Refer to the NIH Chapter for specific disposition instructions.

NIH e-mail messages. NIH e-mail messages (messages, including attachments, that are created on NIH computer systems or transmitted over NIH networks) that are evidence of the activities of the agency or have informational value are considered Federal records. These records must be maintained in accordance with current NIH Records Management guidelines. If necessary, back-up file capability should be created for this purpose. Contact your IC Records Officer for additional information.

All e-mail messages are considered Government property, and, if requested for a legitimate Government purpose, must be provided to the requestor. Employees' supervisors, NIH staff conducting official reviews or investigations, and the Office of Inspector General may request access to or copies of the e-mail messages. E-mail messages must also be provided to members of Congress or Congressional oversight committees if requested and are subject to Freedom of Information Act requests. Since most e-mail systems have back-up files that are retained for significant periods of time, e-mail messages and attachments are likely to be retrievable from a back-up file after they have been deleted from an individual's computer. The back-up files are subject to the same requests as the original messages.

**G. Management Controls:** The purpose of this chapter is to provide general information and guidance about requesting a legal opinion or information from OGC. Since the chapter is primarily informational, a management control review does not need to be performed.